

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DESSERTS ON US, INC.,

Plaintiff,

v.

KAMFLEX CONVEYOR
CORPORATION, et al.,

Defendants.

Case No. 19-cv-05944-VC

**ORDER GRANTING MOTION FOR
DEFAULT JUDGMENT AS
MODIFIED**


Re: Dkt. No. 88

The majority of the *Eitel* factors support entry of default judgment in this case. *Eitel v. McCool*, 782 F.2d 1470 (9th Cir. 1986). After considering those factors and all the materials in the record, the Court has determined that Desserts on Us (Desserts) has established liability, damages of \$437,186.82, and costs of \$603.05. Desserts, however, has not met its burden of proving that \$630,398.96 represents damages resulting from Kamflex's conduct. That number reflects the price of "equipment purchased in anticipation of obtaining a mechanized cooking packaging system from someone before entering the contract with KAMFLEX." Desserts made those purchases in May 2017 but didn't contract with Kamflex until September 2017. Desserts claims that, "Because the KAMFLEX cookie packaging system never worked, DESSERTS was never able to use this equipment." Nevertheless, Desserts has failed to explain how this equipment was rendered useless by Kamflex's conduct. Without more, the Court awards Desserts only the post-contract expenses in damages, which should place Desserts the same

position it was in before it contracted with Kamflex.¹

IT IS SO ORDERED.

Dated: February 10, 2021



VINCE CHHABRIA
United States District Judge

¹ The Court has not included the \$15,000 that Desserts requests for attorney's fees. Those fees were required as a condition for setting aside the prior motion for default judgment so the case could be decided on the merits. Because Desserts's renewed motion for default judgment is now granted, and the case will not proceed on the merits, Desserts is no longer entitled to those fees, other than the portion that the defendants have already paid.